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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/238,405	05/05/1994	DANIEL J. CAPON	CELL5.3	5729

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EXAMINER

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance with
37 CFR 1.192(c)**

Application No.

08/28405

Applicant(s)

Capon et al

Examiner

Robert C. Hayes, Ph.D.

Art Unit

1647



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The Appeal Brief filed on Mar 26, 2002 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

MPEP 1207 states that "[e]ntry of a new amendment, new affidavit, or other new evidence in an application on appeal is not a matter of right". 37 CFR 1.116 then states that "[a]ffidavits, declarations, or exhibits submitted after the case has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented". In other words, Appellant has provided new evidence with the Appeal Brief that was never previously made of record, and has also failed to explain why such was not previously submitted in accordance with MPEP 609 B(3). Additionally, it is "improper for appellant to rely on an affidavit, declaration, or exhibit which was refused entry, in an appeal brief"; thereby, making this Brief defective. MPEP 1208.

R. Hayes, Ph.D.

*Mary L. King
SPE, Art. 1647*